

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

KIMBERLY PHILLIPS,

Plaintiff,

vs.

**JAMES MARTIN and
J.B. HUNT TRANSPORT, INC.,**

Defendants.

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CIVIL ACTION NO. 3:21-0021-1763

DEFENDANT JB HUNT TRANSPORT, INC.'S NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1441, Defendant J.B. Hunt Transport, Inc. (“JB Hunt” or “Defendant”) hereby removes to this Court the state court action described in Paragraph 1 below. Pursuant to 28 U.S.C. § 1446(a), Defendant sets forth the following "short and plain statement of the grounds for removal."

A. THE REMOVED CASE

1. The removed case is a civil action filed with the 44th District Court of Dallas County, Texas, on June 16, 2021, styled *Kimberly Phillips v. James Martin and J.B. Hunt Transport, Inc.*, Cause No. DC-2107670.

B. DOCUMENTS AND INFORMATION FROM REMOVED ACTION

2. Pursuant to Local Rule CV-81, Defendant attaches the following documents to this Notice of Removal:

- (a) an index of all documents that clearly identifies each document and indicates the date the document was filed in state court;

- (b) a copy of the docket sheet in the state court action;
- (c) each document filed in the state court action, except discovery material; and
- (d) a separately signed certificate of interested persons that complies with LR 3.1(c) or 3.2(e).

C. REMOVAL IS TIMELY

3. Plaintiff Kimberly Phillips (“Plaintiff”) filed the present civil suit against Defendant in the 44th District Court of Dallas County, Texas (the “Dallas County court”) on June 16, 2021. Defendant was served with Plaintiff’s Original Petition (“the Petition”) on June 29, 2021. In the Petition, Plaintiff asserts negligence-based and *Respondent Superior* causes of action and claims for personal injury damages against Defendant.

4. Defendant files this Notice of Removal based on diversity of citizenship within one year of the commencement of the action, and within 30 days of service, indicating that the present lawsuit was filed in the improper venue of Dallas County District Court, and subsequently became removable to the United States District Court for the Northern District of Texas. Therefore, Defendant contends that this removal is timely made.¹

D. VENUE IS PROPER

5. The United States District Court for the Northern District of Texas, Dallas Division, is the proper venue for removal of the state court action pursuant to 28 U.S.C. § 1441(a) because the 44th District Court of Dallas County, Texas is located within the jurisdiction of the United States District Court for the Northern District of Texas, Dallas Division.

¹ See, 28 U.S.C. § 1446(c)(1).

E. DIVERSITY OF CITIZENSHIP EXISTS

6. This is a civil action that falls under the Court's original jurisdiction pursuant to 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship in accordance with 28 U.S.C. §§ 1441 and 1446.

7. As admitted in the Petition, Plaintiff resides in Oklahoma.² "In determining diversity jurisdiction, the state where someone establishes his domicile serves as a dual function as his state of citizenship."³ Therefore, JB Hunt contends that Plaintiff was domiciled in, and is a citizen of Oklahoma at the time Plaintiff's Petition was filed in the Dallas District Court.

8. Defendant J.B. Hunt Transport, Inc. is a foreign corporation formed under the laws of the State of Georgia. Defendant's primary place of business is in the State of Arkansas. Pursuant to 28 U.S.C. § 1332(c)(1), Defendant is not a citizen of the State of Texas. Rather, Defendant is a citizen of Arkansas. Defendant James Martin was not served as of the time of this removal and his citizenship is not considered, although upon information and belief, Defendant J.B. Hunt believes that Defendant James Martin is a citizen of Texas.

9. Because Defendant JB Hunt is a citizen of a different state as Plaintiff, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

F. THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

10. In her Petition, Plaintiff states that she seeks monetary relief between \$100,000 but not more than \$1,000,000.00. As such, Plaintiffs seek to recover damages in excess of \$75,000.

11. Based on the aforementioned facts, the current state court action may be removed to the United States District Court for the Northern District of Texas, Dallas Division, by

² See, Plaintiff's Original Petition.

³ See, *Preston v. Tenet Healthsystem Mem'l Med. Ctr., Inc.*, 485 F.3d 793, 797 (5th Cir. 2007).

Defendant in accordance with the provisions of 28 U.S.C. § 1441(a) because: (i) this action is a civil action pending within the jurisdiction of the United States District Court for the Northern District of Texas; (ii) this action is between citizens of different states; and (iii) the amount in controversy will exceed \$75,000, exclusive of interest and costs.

G. FILING OF REMOVAL PAPERS

12. Pursuant to 28 U.S.C. § 1446(d), Defendant is providing written notice of the filing of this Notice of Removal to all counsel of record and is filing a copy of this Notice with the Clerk of the 191st District Court of Dallas County, Texas, where this action was originally commenced.

H. CONCLUSION

13. Defendant hereby removes the above-captioned action from the 191st District Court of Dallas County, Texas, and requests that further proceedings be conducted in the United States District Court for the Northern District of Texas, Dallas Division, as provided by law.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT
J.B. HUNT TRANSPORT, INC.**

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on July 29, 2021, the foregoing Notice of Removal was electronically filed, as required by the United States District Court for the Northern District of Texas, using the Court's CM/ECF filing system, which will provide notice and a copy of this document, with attachments, to the following, who are indicated to be registered ECF filers in the United States District Court for the Northern District of Texas:

Via ECF

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